

EXHIBIT M

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
NANCY DENARDI, :
Plaintiff, : Docket No.
-against- : 07CIV5794
DRA IMAGING, P.C. and : (MGC)
IMAGING SUPPORT SERVICES, LLC, :
Defendants. :
-----x

June 20, 2008

10:00 a.m.

Deposition of Defendants, by **MARK NEWTON**,
held at the offices of Keane & Beane, P.C.,
445 Hamilton Avenue, White Plains, New York,
before a Notary Public within and for the
State of New York.

1 M. Newton

2 questions today?

3 A. No.

4 Q. Are you ready to begin?

5 A. Yes.

6 Q. When did you commence your employment
7 with DRA? Again, I am going to be referring to
8 both defendants collectively as DRA today, just
9 to make it easier.

10 A. July 2000.

11 Q. In what capacity?

12 A. Chief financial officer.

13 Q. Was anybody else hired at the time
14 that you came on board in a senior position, if
15 you know?

16 A. Joe Chiseri was hired in June of 2000.

17 Q. And into what position?

18 A. Chief administrative officer.

19 Q. Did you know Mr. Chiseri before you
20 began to work at DRA?

21 A. Yes.

22 Q. How did you know him?

23 A. I met him at the City of Poughkeepsie,
24 where he was the City either administrator or
25 manager and I was the chief financial officer,

1 M. Newton

2 that she should develop supervisory level
3 people in the department that would oversee
4 either people or functions and not have
5 everyone reporting directly to her, but have
6 them reporting up through those people and have
7 those people report to her. It would allow her
8 to have more perspective in terms of give her a
9 chance to take a step back.

10 And one of the persons that, over
11 time, Gail felt was an appropriate person to
12 elevate into that level was Nancy. And it's my
13 recollection that it was Gail who made Nancy
14 the billing department lead as opposed to the
15 billing insurance lead.

16 Q. So are you saying that it is your
17 recollection that there were two promotions:
18 An insurance rep lead promotion and one to
19 billing department lead promotion?

20 A. I don't remember -- I don't remember
21 when Nancy was made the insurance department
22 lead, but I do recall her being elevated to or
23 asked to function as a department-wide lead for
24 Gail.

25 Q. Would that be sort of Gail's

1 M. Newton

2 A. Correct.

3 Q. What was the status of the Cerner
4 project as of the date you wrote this E-mail?

5 A. Ultimately, we went live in the
6 middle of November of '05, and my recollection
7 is we probably, as of the end of October of
8 '05, had identified that we would go live by
9 the middle of November.

10 So, everybody involved with
11 achieving that goal was working very hard and
12 there was lots of pressure to achieve the goal.

13 Q. Did you have any responsibilities of
14 getting Cerner up and running?

15 A. No.

16 Q. Were you overseeing any aspect of
17 the project, the October 27, 2005 time frame?

18 A. I was overseeing Ginni and her
19 people, but they were involved day to day. In
20 just an administrative capacity was I
21 overseeing that.

22 Q. But you were involved in the
23 decision to purchase Cerner?

24 A. Yes.

25 Q. When was that decision made?

1 M. Newton

2 A. It was made over the course of many
3 months, that culminated in the decision to
4 purchase the software in June of '03.

5 Q. How was it paid for? Was it paid
6 for over time, was it paid for up front or
7 something else?

8 MR. KLEIN: Objection to the form.

9 You can answer.

10 A. Well, Cerner is the purchase --
11 Cerner is a company that sells software
12 applications for healthcare providers. Our
13 agreement with Cerner was to make payments over
14 time as the project reached certain milestones,
15 and DRA paid for those payments both out of
16 cash and its own financing.

17 Q. Was there ever a point in time where
18 you thought that you wouldn't be able to
19 integrate Cerner into the existing system at
20 DRA?

21 A. Yes.

22 Originally, Cerner was purchased to
23 be both -- all three of the main types of
24 computer systems that a radiology practice
25 uses: The front end, which is the system that

1 M. Newton

2 tracks the patients as they schedule their
3 appointments, come in through the front door,
4 are seen by the technologists, have the exam
5 performed. It then goes to the transcriptionist
6 or the reading room, to the physician and then
7 to the transcriptionist. That's what we would
8 call the front end.

9 Of the second of the three is what
10 we would call the PAX, which is the computer
11 system that holds the digital images and
12 archives them for future references. And then
13 the third part of it would be the billing and
14 the collecting of the payment system or what we
15 may have called the back-end system.

16 Originally, the agreement with
17 Cerner was to provide all three and replace the
18 existing systems that we had. We were looking
19 for one integrated solution that could do
20 everything.

21 Somewhere around the time that Ginni
22 took over for Gail, maybe just a little after
23 that, it became apparent that the -- that
24 Cerner's billing system was not acceptable to
25 us. It wouldn't be able to perform what we

1 M. Newton

2 needed it to perform, the way we needed it to
3 perform, and so we made a decision to not
4 accept the billing part of the system and,
5 instead, to integrate it in -- integrate Cerner
6 into our existing billing system.

7 Q. Which was Vital Works?

8 A. Correct.

9 Q. And did that require additional work
10 from people in the billing department?

11 A. It required different work. I mean,
12 ultimately I think that it required less work
13 because if we had accepted the Cerner system,
14 it would have worked so poorly that it would
15 have been bad for DRA.

16 So, instead of learning how to use
17 the new system, we had to work at creating the
18 interface from the new system to the existing
19 system.

20 Q. Who created the interface?

21 A. Cerner programmers and vital works
22 programmers and our in-house IT department
23 created the mechanical interface where data was
24 exchanged.

25 Q. Was it sort of a custom-made system

1 M. Newton

2 at that point?

3 A. Yes.

4 Q. Did you have to pay additional
5 moneys in order to create this kind of
6 custom-made plan?

7 A. We did.

8 Q. Mrs. Barkyani testified at her
9 deposition on Tuesday that some time around the
10 holidays of 2005, when Mrs. DeNardi had
11 returned from her disability, that they had a
12 conversation in which Mrs. DeNardi agreed to
13 take over the handling of the Cerner interface.
14 Do you remember that testimony?

15 A. Yes.

16 Q. You were not present during that
17 conversation; were you?

18 A. I don't think so, no.

19 Q. And were you aware, before the
20 alleged meeting took place, that Mrs. Barkyani
21 was going to approach Mrs. DeNardi to discuss
22 her taking over Cerner?

23 A. I don't recall that I was, but Ginni
24 may have mentioned to me she was going to ask
25 Mrs. DeNardi to do it.

1 M. Newton

2 Q. Do you know what work she was
3 performing on May 5th?

4 A. No.

5 Q. How did Heather DeNardi account for
6 her time?

7 A. I don't know.

8 Q. Do you know whether or not the
9 employees in the billing department accounted
10 for their time in any particular way?

11 A. I know that the employees for DRA
12 accounted for their time -- including the
13 billing department -- accounted for their time
14 by using either E-Time or E-Time Clock or
15 E-Timecard.

16 Q. Is that a software program?

17 A. Correct.

18 Q. When you started working at DRA in
19 July of 2000, was the system that was in place
20 one that was on the computer?

21 A. No. When I started, it was the
22 traditional timecard with the -- with all the
23 slots on the wall and the clock and employees
24 who were required to punch the clock, punched
25 the clock with their card.

1 M. Newton

2 Q. And when did it transition over to
3 the system on the computer?

4 A. After I began, so I would estimate
5 2001, 2002.

6 Q. Was Mrs. Barkyani required to
7 account for her time, as well?

8 A. Yes, using E-Timecard.

9 Q. Her system was different than the
10 other employees in the billing department?

11 A. Some employees used E-Time Clock and
12 some used E-Timecard.

13 Q. And how was it determined which
14 system each employee would use --

15 A. Pretty much the ones who were
16 punching the clock used E-Time Clock and the
17 ones who were manually filling out a timecard
18 used E-Timecard.

19 Q. How was that system determined?

20 A. I don't know. That was in place
21 when I got there.

22 Q. Did you ever ask anybody why do some
23 people do it manually and why do some people --

24 A. It was evident to me that people on
25 a more professional level didn't punch the

1 M. Newton

2 A. Yes.

3 Q. And when did your next contact with
4 Mrs. Barkyani occur with regard to Heather
5 DeNardi?

6 A. Later in the morning.

7 Q. When, in relationship to that
8 two-minute conversation that you had?

9 A. Afterwards.

10 Q. About how long afterwards?

11 A. Hour, two hours.

12 Q. After the first initial two-minute
13 conversation, did you take any steps to try to
14 locate Mrs. DeNardi?

15 A. No.

16 Q. Did you go over to Mrs. DeNardi and
17 ask her, Ginni seems very concerned about
18 Heather. Where is she?

19 A. No.

20 Q. And what happened during the second
21 conversation that you had, which you said was
22 about an hour later?

23 A. Ginni came over to say that at some
24 point, Heather had left; that she had then had
25 a conversation with Mrs. DeNardi where Ginni

1 M. Newton

2 asked Mrs. DeNardi if she had punched out
3 Heather and Mrs. DeNardi initially said no.

4 Ginni, from computer records, believed
5 that she had, and asked Mrs. DeNardi again,
6 "Did you punch Heather out?" And at some point,
7 Mrs. DeNardi said, "I did." So, Ginni came
8 over to say that she was upset that Mrs. DeNardi
9 had lied to her and hadn't told her the truth
10 until she was either confronted with or
11 believed that Ginni had the documentation to
12 indicate that she had punched Heather out.

13 So then Ginni and I talked about what
14 to do as a result of that occurrence and we
15 talked about termination, because we didn't
16 think we could trust Mrs. DeNardi anymore and
17 we decided to sleep on it over the weekend and
18 decide on Monday morning.

19 Q. Up until that point, had Ginni
20 Barkyani ever indicated to you that she felt
21 she couldn't trust Nancy DeNardi?

22 A. I don't think so.

23 Q. In fact, up until that point, it was
24 your understanding that Mrs. Barkyani
25 considered Nancy DeNardi a key employee;

1 M. Newton

2 correct?

3 A. Yes. And I did, too.

4 Q. And the Cerner project was a
5 significant project for DRA?

6 A. Uh-hmm.

7 Q. A lot of --

8 MR. KLEIN: Yes?

9 A. Yes.

10 Q. A lot of money had been invested in
11 the project?

12 A. Yes.

13 Q. And you wanted it to succeed in
14 whatever way it could?

15 A. Yes.

16 Q. And that was a project that you
17 became or the interface portion of the project
18 had been assigned to Mrs. DeNardi at a given
19 point in time?

20 A. Yes.

21 Q. And that was an important project?

22 A. Yes.

23 Q. Did the timecard that Mrs. Barkyani
24 said she had seen regarding Heather being
25 punched out, did the timecard itself indicate

1 M. Newton

2 Q. Other than terminating somebody's
3 employment for any type of misconduct, there
4 are a variety of disciplinary actions that can
5 be taken against an employee who has done
6 something that the company feels is wrong;
7 correct?

8 A. Correct.

9 Q. They can be suspended; that's an
10 option?

11 A. Correct.

12 Q. As Mrs. Yolton was; correct?

13 A. Yes.

14 Q. Did you ever discuss Mrs. Barkyani
15 suspending Mrs. DeNardi without pay for
16 allegedly lying?

17 A. No.

18 Q. And it's your testimony that
19 Mrs. Barkyani told you that she lied about
20 punching her daughter's timecard? Is that your
21 understanding of what the lie was?

22 MR. KLEIN: Objection to the form.

23 You can answer.

24 A. My understanding is that
25 Mrs. DeNardi lied to Mrs. Barkyani about

1 M. Newton

2 clocking out or punching out her daughter,
3 Heather.

4 Q. And did you ever testify under oath
5 that Mrs. DeNardi was fired for punching her
6 daughter out at a time when her daughter was
7 still at DRA?

8 A. No.

9 Q. Do you remember giving that sort of
10 testimony during the unemployment hearing?

11 A. No.

12 Q. Did you take any steps at all on May
13 5th to verify what Mrs. Barkyani was telling
14 you about Mrs. DeNardi lying to her?

15 A. No.

16 Q. Did you speak to Heather DeNardi at
17 all on May 5th?

18 A. No.

19 Q. Did you speak to Mrs. DeNardi at any
20 point in time on May 5th?

21 A. I may have, but not -- I don't
22 recall speaking to her about this incident on
23 May 5th.

24 Q. Did you attempt to speak to
25 Mrs. DeNardi over the weekend, May 6th and May

1 M. Newton

2 concerned or angry or annoyed, whatever your
3 words are, about looking for Heather and
4 Mrs. DeNardi allegedly lying?

5 A. No.

6 Q. You just accepted what Mrs. Barkyani
7 said without thinking about anything else?

8 MR. KLEIN: Objection to the form.

9 A. Yes.

10 Q. When did you next speak to
11 Mrs. Barkyani again about Nancy DeNardi?

12 A. Some time Monday morning.

13 Q. Did you speak to her at all over the
14 weekend about it?

15 A. No.

16 Q. Did Mrs. Barkyani require your
17 approval or authorization in order to terminate
18 an employee?

19 A. It would depend on the employee.

20 Q. Can you explain when you say that,
21 "It would depend on the employee," what do you
22 mean by that?

23 A. If it was a part-time employee like
24 Heather, no, she wouldn't. If it was a
25 full-time employee like Nancy, she would.

1 M. Newton

2 Q. At any point during either of the
3 two conversations that you had with her on May
4 5th, did Mrs. Barkyani discuss with you
5 terminating Heather DeNardi's employment?

6 A. I think so, yes.

7 Q. Was it during both of the
8 conversations or during either one of them?

9 A. I think it was the latter one.

10 Q. What did she say about Heather
11 DeNardi's employment?

12 A. I don't know, other than I think she
13 said she terminated Heather or was going to
14 communicate to Nancy about Heather.

15 Q. Do you know whether or not she spoke
16 to Nancy DeNardi about the termination of her
17 employment?

18 A. I don't know.

19 Q. Did you ask her?

20 A. I don't remember.

21 Q. What occurred Monday morning, May
22 8th, with regard to you speaking to
23 Mrs. Barkyani about Nancy DeNardi's employment?

24 A. We met to discuss what had happened
25 on Friday and to see how we felt about it,

1 M. Newton

2 given the passage of a couple of days.

3 Again, I know Ginni was annoyed with
4 having to look for Heather and then -- she was
5 angry that Nancy had lied to her. I was
6 disappointed that Nancy had lied to Ginni and,
7 because of Nancy's important responsibilities,
8 concerned that I could no longer trust her,
9 which was the reason to consider termination.

10 And, so, Monday morning we discussed
11 to see if we felt any differently, having slept
12 on it over the weekend, and I still felt like I
13 wanted to terminate her because I no longer
14 trusted her, and Ginni felt the same way.

15 Q. In your view, was it -- if this lie
16 had occurred, which you apparently believe that
17 it did, did you feel that it was a very, very,
18 serious lie? First she said she didn't punch
19 her daughter out and then she confessed to
20 punching her out. Was that a very, very
21 significant lie, in your view?

22 MR. KLEIN: Objection to the form.

23 A. Yes.

24 Q. Was anybody at DRA going to be
25 suffering any sort of damage as a result of

1 M. Newton

2 to an end?

3 A. I don't remember.

4 Q. Were you at all involved in her
5 departure from DRA?

6 A. I don't think so.

7 Q. Did her name come up at all during
8 the meeting that you had with Mrs. DeNardi on
9 May 8th?

10 A. I don't think so.

11 Q. Mrs. DeNardi didn't mention her name?

12 A. I don't think so.

13 Q. Did you make any notes of the meeting
14 on May 8th?

15 A. I asked Ginni to.

16 Q. And do you know whether or not Ginni
17 did?

18 A. I believe she did.

19 Q. I'm referring to contemporaneous
20 notes. Not anything that may have been written
21 after the meeting concluded. I'm talking about
22 while it was going on.

23 A. No, it was after the meeting
24 concluded.

25 Q. Who was present during the meeting?

1 M. Newton

2 A. On May 8th?

3 Q. Correct.

4 A. When Nancy was terminated?

5 Q. Correct.

6 A. It was myself, Ginni and Nancy.

7 Q. There was nobody else in the room?

8 A. There was not.

9 Q. How long did the meeting take?

10 A. Five minutes.

11 Q. About what time of day did it occur?

12 A. Around four o'clock.

13 Q. Was there anything else that
14 Mrs. DeNardi did, in your mind on May 8th, that
15 caused her to become untrustworthy?

16 A. No.

17 Q. It was just strictly lying about
18 punching her daughter out and then ultimately
19 telling the truth?

20 A. What was strictly about her lying?

21 Q. What caused her to become
22 untrustworthy, in your view.

23 A. Yes, it was that she lied to her
24 supervisor about punching her daughter out.

25 Q. And you were not present when the

1 M. Newton

2 MS. PERRY: I don't have anything
3 further.

4 Thank you very much.

5 MR. KLEIN: Thanks.

6 (Time noted: 12:35 p.m.)

7

8

9 Mark Newton

10

11 Subscribed and sworn to before me
12 this ____ day of _____, 2008.

13

14

15 Notary Public

16

17

18

19

20

21

22

23

24

25

1

2 C E R T I F I C A T E

3

4 STATE OF NEW YORK)

5 : ss.

6 COUNTY OF NEW YORK)

7

8 I, ERIC ALLEN, a Notary Public
9 within and for the State of New York, do
10 hereby certify:

11 That MARK NEWTON, the witness
12 whose deposition is hereinbefore set forth,
13 was duly sworn by me and that such
14 deposition is a true record of the
15 testimony given by the witness.

16 I further certify that I am not
17 related to any of the parties to this
18 action by blood or marriage, and that I am
19 in no way interested in the outcome of this
20 matter.

21 IN WITNESS WHEREOF, I have hereunto
22 set my hand this 2nd day of July, 2008.

23



24

25 ERIC ALLEN